

**Notice of Allowability**

Application No.

10/628,383

Examiner

N. Bhat

Applicant(s)

SOLORIO ET AL.

Art Unit

1764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment of 4-11-2005.
2. ☒ The allowed claim(s) is/are 1-32 re-numbered as 1-16, 19, 21-27, 32, 17-18, 20,28-29, 30-31 respectively.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

1. The examiner acknowledges the withdrawal of the finality during the interview conducted with the examiner and the examiner's supervisor Glenn Caldarola.

Applicant's arguments are persuasive regarding the reduced calorie freezable beverage and the water based creamer. The examiner did point out in the interview summary or March 17, 2005, that the office was according no patentable weight to applicant's water based creamer preamble. In order to expedite prosecution the examiner discussed with applicant to positively recite creamer in the water based creamer to breath life and meaning into the preamble by examiner's amendment, which follows in the interview of May 11-12, 2005.

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Wallace on May 12, 2005.

The application has been amended as follows:

In the Specification:

Page 1, paragraph [001], line 2 after "60/399,437" insert --filed 7-31-2002--.

In the Claims:

Claim 25, line 1 after "comprising" insert --creamer;--

3. The following is an examiner's statement of reasons for allowance:

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The invention relates to a reduced calorie 3X concentrate comprising about 0.01 to about 0.4% by weight high potency sweetener; about 1 to about 30% by weight flavoring; about 1 to about 32% by weight sugar substituted; about 0.3 to about 12% by weight ethanol, wherein the concentrate has less than about 32° Brix. Also claimed is a water based creamer which includes a creamer which includes about 0.1 to about 10% emulsifier; about 0.001 to about 2% stabilizer; about 1 to about 15% sweetener and about 0.01 to about 12% fat. The prior art fails to teach a concentrate, which includes ethanol, and further when the concentrate is diluted for the preparation of a freezeable beverage, the beverage has a Brix value of less than 11° and an ethanol content of about 0.1 to about 4%, which is not taught or suggested by the prior art. The prior art fails to teach the water-based creamer as claimed having the specific amounts and ingredients as claimed by applicant.


4. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 571-272-1397. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 571-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
N. Bhat  
Primary Examiner  
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